succeed if the defendant pleaded" that he was guilty of no negligence. It is rather noteworthy that Justice Denman makes no reference to Lord Blackburn's remark in *Fletcher* v. *Rylands*, above quoted.

Stanley v. *Powell* may be considered as definitely settling the English law upon the subject; and though no mention was made by Justice Denman of the leading American cases, it is not too strong an inference to suppose that he must have had them in mind, and was influenced by their practical, common-sense doctrine.

EMPLOYER'S LIABILITY FOR INJURIES RESULTING FROM DEFECTIVE MACHINERY. — It is established law that an employer is bound to use ordinary care to keep in a reasonably safe condition the place where his employees are required to work. It is equally well established that an employee assumes all risks incident to the service into which he enters. But where a negligent breach of duty on the part of the employer augments the hazards of the service, the employee may hold the employer accountable, unless, by voluntarily continuing in the employer's service, he has assumed such danger. The master is still responsible when he has been negligent, even though the negligence of a fellow-servant may have concurred in bringing injury on the plaintiff.

It has often been asked how far a servant, the performance of whose duties becomes dangerous through the negligence of his employer properly to repair the premises, is justified in relying upon his employer's promise to amend the defect, when he himself has full knowledge of the dangerous conditions which exist, and of the risk which he runs by continuing in the service. The question was suggested again by a dictum of Morton, J., in the case of *Lewis* v. *N. Y. & N. E. R. R. Co.* (26 N. E. Rep. 431). The Massachusetts court gave no decision directly upon the point, however, for the plaintiff could not testify that he had urged the defendant's superintendent to make repairs because the discharge of his own duties had become more dangerous. Most, if not all, previous cases have gone upon the ground that the servant was led to continue at his employment by the master's promise that the defect complained of should be remedied. In some of them, there is a direct request to the servant, by the master or his representative, so to continue in service.

Another recent decision is that of *Rogers et al.* v. *Leyden* (26 N. E. Rep. 210), where the Indiana court held, after indorsing the propositions stated above, that the fact that the plaintiff remained in the defendant's employ after he had discovered that the risk thereof had been increased by the defendant's negligence, could not preclude recovery, where the defendant promised to remove the threatened danger.

Decisions which accord with that in the Indiana case have not been founded merely upon what was thought to be a rule of public policy, but upon contracts implied from the relationship of service, allowing the servant to rely upon the master's promise, unless the danger of continuing is so great that a reasonably prudent man would not assume it. And a similar explanation is undertaken by certain leading text-writers. It is said that a servant has the same right that any one else has to complete his contract in reliance upon its original terms. The

real question is held to be one of fact, whether or not the master had a right to believe that the servant intended to waive his objection to the defect in the materials provided for his work, and to accept an implied contract exempting the master from liability. (Sher. & Red., Neglig., sec. 215; Cooley, Torts, 2d ed. 559.)

It was well pointed out, however, by defendant's counsel in *Lewis* v. *N. Y. & N. E. R. R. Co.*, that the clear reason for the rule that the master owes the servant the inalienable duty of supplying suitable machinery is, that the servant may fairly expect that these matters of which he can know nothing, and of which the master, if he choose, can know everything, will be properly looked to by the master. It seems to follow reasonably that, whenever the servant's knowledge, or opportunity for obtaining knowledge, as to the dangers which will be incurred if he remains in service, is equal to his master's, the master owes him no duty to guard him against such dangers. The supposition is not that the employee, believing the employer has righted matters, goes on with his work without noticing the continuance of the defect. The servant knows as well as his master that the defect cannot be cured at once, and must appreciate the risk he will incur if he remains. To continue in the service is still a voluntary act, even if to leave it be a matter of hardship for the employee; and the principle of *volenti non fit injuria* may well apply.

THE LAW SCHOOL.

LECTURE NOTES.

[These notes were taken by students from lectures delivered as part of the regular course of instruction in the School. They represent, therefore, no carefully formulated statements of doctrine, but only such informal expressions of opinion as are usually put forward in the class-room. For the form of these notes the lecturers are not responsible.]

THE STATUTE OF LIMITATIONS IN CASE OF FRAUD OR MISTAKE, AT LAW AND IN EQUITY. — *From Professor Ames's Lectures.* — FRAUD. — There is much diversity of opinion as to the rights of a plaintiff who has been defrauded of his money, and who has not discovered the fraud until after the period of limitation has elapsed. Inasmuch as the cause of action accrues in such cases when the fraud is consummated, and since the language of the Statute of Limitations is absolute, that no action on the case shall be brought unless within six years of the time when the cause of action accrued, it would seem to be a clear evasion of the statute to allow a recovery at law after the six years. Accordingly, in many jurisdictions recovery is not allowed in such cases.[1]

But in other jurisdictions the courts, influenced by the great hardship upon the plaintiff, have not scrupled to read into the statute an exception in favor of plaintiffs ignorant of the fraud.[2]

There is, however, a mode by which a plaintiff may secure full jus-

[1] *Gibbs* v. *Guild*, 9 Q. B. Div. 59 (*semble*); *Barber* v. *Houston*, L. R. 18 Irish, 475; *Campbell* v. *Vining*, 23 Ill. 525; *Ellis* v. *Kelso*, 18 B. Mon. 296; *Wilson* v. *Ivy*, 32 Miss. 233; *Troup* v. *Smith*, 20 Johns. 33; *Foot* v. *Farrington*, 41 N. Y. 164; *Miller* v. *Wood*, 116 N. Y. 351; *Smith* v. *Bishop*, 9 Vt. 110.

[2] *Bailey* v. *Glover*, 21 Wall. 342; *Homer* v. *Fish*, 1 Pick. 435; *Bowman* v. *Sanborn*, 18 N. H. 205; *Jones* v. *Conoway*, 4 Yeates, 109. It will be remembered that in Massachusetts, New Hampshire, and Pennsylvania there was formerly no chancery jurisdiction.